

XVI. COURSE OF THE TRIAL

We are going to try the case in two phases. We will now start with the first phase of trial. You will hear opening statements. Each side may make an opening statement. An opening statement is not evidence but is simply an outline of what that party intends to prove to help you follow the evidence that will be presented.

After the opening statements, the parties will present their evidence, according to the following general order.

First, Nippon Shinyaku and NS Pharma will present their evidence that Sarepta's infringement of the NS patent has been and continues to be willful and that the asserted claim of the Wilton Patent is invalid.

Second, Sarepta and UWA will respond to the contention that the asserted claim of the Wilton Patent is invalid and will present evidence that Nippon Shinyaku and NS Pharma's infringement of the Wilton patent has been and continues to be willful. Sarepta will also present evidence to respond to Nippon Shinyaku and NS Pharma's contentions of willfulness related to the NS patent and present evidence of invalidity of the asserted claim of the NS patent.

Third, Nippon Shinyaku and NS Pharma will present evidence responding to Sarepta and UWA's contentions of willfulness related to the Wilton patent and invalidity of the asserted claim of the NS patent.

As a reminder, to prove that any infringement was willful, a party must persuade you that it is more likely than not that the infringement was willful. To prove invalidity of any claim, a party must persuade you by clear and convincing evidence that the claim is invalid.

After the evidence is presented, each side may make closing arguments on the issues of willfulness and invalidity. Closing arguments are not evidence. Their purpose is to summarize

and interpret the evidence for you. Both before and after those closing arguments, I will give you instructions on the law and describe for you the matters you must resolve.

You will then retire to the jury room to deliberate on your verdict on the issues of willfulness and validity. We expect to have this portion of the case to you by Thursday afternoon. You will be permitted to stay as late as you wish on Thursday, and you may resume deliberations on Friday morning. This will conclude the first phase of trial.

After you render your verdict on the parties' contentions of invalidity and willfulness, we will start the second phase of trial. That phase will have a shorter presentation of evidence and closing arguments, all of which will take a maximum of three hours, and all of which we expect to present to you on Friday. I will instruct you on that later in the week. You will then retire to the jury room to deliberate on that verdict.